IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

W.P.Nos.5873, 5877 and 5879 of 2005

WRIT PETITION NO. 5873 of 2005

Between:

1 Sirla Builders Pvt ltd., a Company Incorporated under

the Companies Act, 1956, having its registered Office at
Sirla Towers, Hyderabad, Kukatpally, Hyderabad-72, rep. by its

Manaing Director.
2 P. Suryanarayana Raju, S/o. Narasimha Raju,
R/o Sirla Builders Pvt Ltd., Sirla Towers, H.No.2-22,
Hydernnagar, Kukatpally, Hyd-72.
3 K. Kondal Rao, S/o. K. Narayan rao,
R/o H.No.1-72, Kukkatpally, Hyderabad-72.

..... PETITIONERS

AND

Hindustan Aeronautics Employees Co-Operative Housing Society

Limited (TBC NO.269), a Society Registered under
A.P., Co-Operative Societies Act, 1964, Having its Office at Sy.No.77,

Hafeezpet Village, Serilingampally Mandal,
R.R.District, rep. by its Secretary G. Ramavataram,

S/o Late G. Banaiah, HAL Campus, Balanagar, Hyderabad-42.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order of direction more particularly one in the nature of Writ of Mandamus by declaring the impugned order in I.A.No.1506/2004 in LGC No.17/2004, dt. 15.03.2005 on the file of Special Court under Land Grabbing (Prohibition) Act, 1982, Hyderabad as illegal and erroneous and consequently set-aside the same and pass such other order/s as this Hon'ble may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr.B.VIJAYSEN REDDY

Counsel for the Respondent : Mr. B.MAHENDER REDDY

WRIT PETITION No. 5877 of 2005

Between:

1 Sirla Builders Pvt.Ltd., a company incorporated under the

Companies Act, 1956, having its registered office at
Sirla Towers, Hydernagar, Kukatpally, Hyderabad-72, rep.,

by its Managing Director.
2 P.Suryanarayana Raju, s/o Narasimha Raju,
R/o Sirla Builders Pvt.Ltd., Sirla Towers, H.No.2-22,
Hydernagar, Kukatpally, Hyderabad-72.
3 K.Kondal Rao, s/o K.Narayan Rao,
R/o H.No.1-72, Kukatpally, Hyderabad-72.

..... PETITIONERS

AND

Hindustan Aeronautics Employees Co.op.Housing Society Ltd.(TBC No.269)

a Society reg.under A.P.Co.op.Societies Act, 1964,

having its office at Sy.No.77, Hafeezpet Vg. Serilingampally Mandal, R.R.Dist.rep., by its Secretary
G.Ramavataram, s/o late G.Banaiah, r/o A-628, HAL Campus, Balanagar, Hyderabad-42.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order of direction more particularly one in the nature of writ of mandamus by declaring the impugned order in I.A.No.1505/2004 in LGC No.17/2004, dt.15-03-2005 on the file of Special Court under Land Grabbing (Prohibition) Act, 1982, Hyderabad as illegal and erroneous and consequently set-aside the same and pass

such other order/s as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr. B.VIJAYSEN REDDY

Counsel for the Respondent : Mr. B. MAHENDER REDDY

WRIT PETITION No.5879 of 2005

Between:

1 Sirla Builders Pvt. Ltd., a Company incorporated under the

Companies Act, 1956 having its registered Officer at Sirla

Towers, Hydernagar, Kukatpally, Hyderabad-72,
Rep. by its Managing Director.
2 P. Suryanarayana Raju S/o. Narasimha Raju
R/o. SirlaBuilders Pvt. Ltd.,Sirla Towers, H.No.2-22, Hydernagar,

Kukatpally, Hyderabad-72.
3 K. Kondal Rao S/o. K. Narayan Rao
R/o.H.No. 1-72, Kukatpally, Hyderabad-72.

..... PETITIONERS

AND

Hindustan Aeronautics Employees Co-operative Housing Society Limited (TBC No. 269) a society, having its Office at Sy.No. 77, Hafeezpet, Vg., Serilingampally Mandal, Ranga Reddy District, Rep. by its
Secretary G. Ramavataram, S/o. Late G.Banaiah, aged 50yrs, Occ: HAL Employee, R/o.A-628,HAL Campus,Balanagar, Hyderabad

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of writ of mandamus by declaring the impugned order in I.A.No. 1504/2004 in LGC No.,17/2004 dt. 15-3-2005 on the file of Special Court under Land Grabbing (Prohibition) Act, 1982 Hyderabad as illegal and erroneous and consequently set aside the same and pass such other order/s as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr. B.VIJAYSEN REDDY

Counsel for the Respondent :. Mr. B. MAHENDER REDDY

The Court at the admission stage made the following :

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE Mr. JUSTICE C.V.RAMULU

W.P.Nos.5873, 5877 and 5879 of 2005

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COMMON JUDGMENT: (per **C.V. RAMULU,J**)

These three writ petitions are filed challenging the common order dated 15-3-2005 passed in I.A.Nos.1504, 1505 and 1506 of 2004 in L.G.C.No.17 of 2004 on the file of the Special Court under the Land Grabbing (Prohibition) Act, Hyderabad. W.P.No.5873 of 2005 is filed challenging the Order in I.A.No.1506 of 2004, W.P.No.5877 of 3005 is filed against the Order in I.A.No.1505 of 2004 and W.P.No.5879 of 2005 is filed against the Order in I.a.No.1504 of 2004.

Since common questions of fact and law arise for consideration, these three writ petitions are disposed of by this common Order.

The writ petitioners are the respondents in the above I.As./LGC. I.A.Nos.1504 and 1505 of 2004 are filed under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure seeking grant of interim injunction restraining the writ petitioners/respondents or any person claiming through or under them from alienating the application schedule land or any structures raised thereon by way of sale, lease, exchange, gift or otherwise in any manner and also to restrain the writ petitioners/respondents from altering the nature of the application schedule land in any manner by raising structures or otherwise.

I.A.No.1506 of 2004 was filed under Order XXVI Rule 9 of C.P.C., by the respondent herein to appoint a Commissioner to make local inspection of the application schedule land to note down the physical features and constructions being carried by the respondents, thereon.

Before going into the facts leading to filing of these writ petitions, it may be apt to note that the respondent herein filed L.G.C.No.17 of 2004 claiming *inter alia* that it is the owner of Ac.62.02 gts in Sy.No.77 of Hafeezpet village, Serilingampally Mandal, Ranga Reddy district and they have acquired title to the said property under registered sale deeds executed by defendants 17,30,39,47,59,60,61,94,115,117 and 118 in C.S.No.14 of 1958 on the file of this Court. It was contended that the

respondent-applicant and their vendors acquired title to the property on allotment made to them pursuant to the preliminary decree in C.S.No.14 of 1958, dated 28-6-1963. It is alleged by the respondent-society that they purchased an extent of Ac.62.02 gts out of Acs.127.00 of land in Sy.No.77 vide sale deeds executed during the year 1981-82 from the shareholders in C.S.No.14 of 1958. Further, the respondent-applicant obtained vacant possession of the said land from its vendors on the respective dates of execution of registered sale deeds. Since then the society is in peaceful possession and enjoyment of the same and the writ petitioners without any legal entitlement, grabbed the application schedule land ad measuring Acs.2.00 during the month of January,2004 with a view to make illegal gain for themselves. The writ petitioners are indulging in grabbing activity in the name of the 1st writ petitioner-company. The writ petitioners are plotting out the said land and contemplating to alienate the same to third parties. Notwithstanding the protest by the respondent herein, the writ petitioners were going ahead with the works in the grabbed land illegally. They are laying roads and constructing parapet walls in the said land. The writ petitioners have committed act of land grabbing within the meaning of the A.P. Land Grabbing (Prohibition) Act,1982 (for short 'the Act') and the writ petitioners are liable to be declared as land grabbers and also to be punished under the said Act, apart from being liable to be evicted from the said land and for payment of damages of Rs.5.00 lakhs.

The application in L.G.C.No.17 of 2004 was filed in the month of March,2004. However, I.A.Nos.1504 to 1506 of 2004 were filed on 21-12-2004. On 7-1-2005 an interim order was passed in I.A.No.1505 of 2004 directing both the parties to maintain *status quo* and not to proceed further.

The writ petitioners-respondents filed a detailed counter affidavit in the above Interlocutory Applications stating, *inter alia,* that the applicant society is nothing to do with the application schedule land and they are the owners of the land in Sy.Nos.158 and 159 of Hydernagar village. They never occupied the schedule land and there is no scope to grant interim injunction as they raised structures on their own land and they are at finishing stage. The respondent-applicant kept silent for more than (9) months and filed the present petitions for oblique motives and the petitions are liable to be dismissed, since the respondent-applicant has no title to the property and there was enormous delay in filing the petitions.

The Special Court, on appreciation of the material placed before it, allowed I.A.Nos.1504 and 1505 of 2004 holding that the respondent herein (applicant) established *prima facie* that it is the owner of the property in Sy.No.77 of Hafeezpet village and as it was supported by the report of the Mandal Revenue Officer and as there was commencement of construction activity in the disputed land, it is a fit case to grant interim injunction restraining the writ petitioners (respondents before the Special Court) from carrying out any further construction in the disputed land and otherwise alter the nature of the said land in any manner and also from alienating the said property. Likewise, I.A.No.1506 of 2004 was allowed recording that the learned counsel for the writ petitioners fairly admitted that there was no objection for appointing the Commissioner to note down the physical features of the disputed land and thus appointed Sri Amarnath, Advocate as Commissioner to note down the physical features and the stage of construction carried out by the writ petitioners in the disputed land. Aggrieved by the said order, the present writ petitions are filed as noticed above.

Learned counsel for the writ petitioners i.e. respondents before the Special Court strenuously contended that though L.G.C.No.17 of 2004 was filed in the month of March,2004, the respondent-applicant has not filed any petitions immediately seeking interim injunction as to constructions etc., and the above I.A.Nos.1504 to 1506 of 204 were filed only on 21-12-2004 mainly basing on the report of the Mandal Revenue Officer, which, in fact, is in favour of the writ petitioners. He also strenuously contended that the very application under Section 8(1) of the Act itself is not maintainable, since the writ petitioners are not land grabbers and they are the owners of the land. At the most, it can be said that there is some dispute as to the boundaries of the land and for such dispute the Special Court is not the forum. Even otherwise, the balance of convenience is not in favour of the respondent-applicant since the constructions were started long ago and they are, in fact, at the finishing stage. The respondent-applicant is well aware of the constructions being carried out by the writ petitioners. Only to harass the writ petitioners, the respondent-applicant filed not only L.G.C. but also the above I.As. after a long delay of more than nine months. The finding of the Mandal Revenue Officer that the disputed land is situated in Sy.No.77 of Hafeezpet, whereas the writ petitioners got the land in Sy.Nos.158 and 159 of Hydernagar village, Balanagar Mandal of Ranga Reddy district, is

perverse. The construction of the structures is already completed and is at the finishing stage.

Learned counsel for the respondent-applicant contended that the orders under challenge are only discretionary orders and they cannot be interfered with under Article 226 of the Constitution of India unless and until some jurisdictional aspect is involved. The writ petitioners have not raised questions as to jurisdiction of the Special Court in entertaining the application. The writ petitioners while avoiding the service of notice in the very LGC went on making constructions and it took three months for the respondent-applicant to serve notice on the writ petitioners. Therefore, the respondent-applicant had to file the present I.As. seeking suitable directions and in fact, even after status quo order was made on 7-1-2005, the writ petitioners did not heed to the same. The Mandal Revenue Officer's report *prima facie* establishes that the land in dispute is located in Sy.No.77 of Hafeezpet village, whereas the writ petitioners' claim is concerned with the lands in Sy.Nos.158 and 159 of Hydernagar village. If the order passed in the I.As. is not upheld, the whole purpose of filing L.G.C. would be defeated.

We have given our earnest consideration to the submissions made by the learned counsel on either side, perused the impugned order and other material made available on record.

It is an admitted fact that no I.A. was filed by the respondent-applicant along with the L.G.C. in the month of March,2004, though it is stated in the statement of facts that the writ petitioners grabbed the application schedule land during the month of January,2004 itself. In fact, at paragraph-6 of the Statement of facts filed in support of its case, the respondent-applicant stated as under:

> "6. It is submitted that the respondents have no semblance of right over any part of land purchased by the applicant society in Sy.No.77 of Hafeezpet vilolage. But the respondents, without any legal entitlement, grabbed the application schedule land admeasuring about Ac.2.00 gts during the month of January,2004 with a view to make illegal gain for themselves. The respect Nos.2 and 3 are indulging in grabbing activity in the name of the respondent No.1 company. The respondent No.2 claims to be the Managing Director of the respondent No.1 company and respondent No.3 claims to be its administrator. The respondents are now plotting out the said lands and contemplating to alienate the same to third parties. Notwithstanding protest by the applicant, the respondents are going ahead with the works in the said grabbed land illegally. They are laying the roads and constructing the parapet walls in the said land. The respondents have thus committed the act of grabbing within the meaning of A.P. Land Grabbing (Prohibition) Act,1982. The respondents are, therefore, liable to be declared as land grabbers and are to be

punished under the said Act. The respondents are also liable to be evicted from the said land and for payment of Rs.5,00,000/-. Hence, this application."

As seen from above, it is clear that even as on the date of filing of L.G.C. the plotting of the land was going on and the writ petitioners contemplating to alienate the lands to third parties and they were also laying roads and constructing parapet wall in the said land. In spite of this, the respondent-applicant has not moved the Special Court seeking injunction at the earliest point of time. The respondent-applicant was in doubt as to whether its claim was right or not. The very I.As. seem to have been filed taking inspiration from the report submitted the Mandal Revenue Officer, wherein it is stated that the land is located in Sy.No.77 of Hafeezpet and not in Sy.Nos.158,159 and 162 of Hydernagar village as claimed by the writ petitioners. Therefore, they have not filed any Interlocutory Application seeking interim injunction etc., till the report is filed by the Mandal Revenue Officer. It is curious to note that the Mandal Revenue Officer visited the spot on 29-9-2004 and prepared a report on 1-10-2004, which was placed before the Special Court. The relevant portion of the report of the Mandal Revenue Officer reads as under:

> "……Several claimants claiming as allottees as per the Decree and Judgment of C.S.14/58 and subsequent assignees are filing petitions, some of them are overlapping claims. Further different courts are handing over the possession of part/piece of the above land to the alleged Decree holder without any intimation to the Government and knowledge of the Government, though the land is in possession of the Government as the same is recorded as Government land. Some of the cases have come to the notice of the Government on the application of such so called decree/assignment holder taken possession through the courts in which cases the Government have already initiated steps to set aside those orders in the appropriate court. But in no case the Government has handed over possession either to the petitioner or to the respondents as the land belongs to Government and in possession of Government including the application scheduled land……..
>
> In view of the above, the ownership of the land in question vest with the Government and the same is in physical possession of Government. The attested copy of Pahani in respect of Sy.No.77 of Hafeezpet village for the year 2000-2001 is also enclosed. Further, the alleged claimants nor their predecessors in title have filed any declaration before the Urban Land Ceiling authorities as it falls within the Urban agglomeration under the purview of Urban Land (C & R) Act."

It is also noted by the Mandal Revenue Officer that there is a construction area of

about Ac.0.25 gts and Ac.0.28 gts as open land. This itself shows that the very inspiration for filing the above Interlocutory Applications is the report of the Mandal Revenue Officer and by the time the Mandal Revenue Officer prepared the report on 1-10-2004, the constructions were already there and admittedly, the status quo order in I.A.No.1505 of 2004 was obtained on 7-1-2005 i.e. two months thereafter.

We are of the considered opinion that I.A.Nos.1504 and 1505 of 2004 are filed belatedly and since substantial constructions have already been made, it was not appropriate on the part of the Special Court to grant interim injunction restraining the writ petitioners from carrying out any further construction or to alter the nature of the land. There is no balance of convenience in favour of the respondent-applicant. On the other hand, if the constructions are stopped in the middle, they would be spoiled.

In view of the above, we are of the considered opinion that the order passed in I.A.Nos.1504 and 1505 of 2004 is liable to be set aside. Accordingly, it is set aside. The writ petitioners are at liberty to go ahead with the constructions, but they shall not alienate the property during the pendency of the L.G.C. and they shall not claim any equities in case any adverse orders are passed against them in the LGC.

Insofar as I.A.No.1506 of 2004 is concerned, we feel that no damage is caused in appointing an Advocate-Commissioner for recording the physical features of the land and also the stage of the constructions carried out by the writ petitioners.

In the result, W.P.Nos.5877 and 5879 of 2005 are allowed to the extent indicated above and W.P.No.5873 of 2005 is dismissed. However, we make it clear that we have not expressed any opinion on merits of the L.G.C. before the Special Court and any observations made in this order shall not come in the way of the Special Court in deciding the matter on its own merits. The writ petitioners are at liberty to canvass all the grounds including the maintainability of the very L.G.C. before the Special Court and the Special Court shall decide the L.G.C. uninfluenced by the observations, if any, made in this order. There shall be no order as to costs.

Having regard to the nature of controversy between the parties, we consider it appropriate to direct the Special Court to dispose of the L.G.C., within a period of four months from the date of receipt of a copy of this order. Learned counsel for the petitioners as well as the learned counsel for the respondents agreed to cooperate with the Special Court for the disposal of the L.G.C. The Special Court shall not entertain any unreasonable request for grant of adjournment by either of the parties.

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B.Sudershan Reddy, J

04-4-2005

_____

C.V.Ramulu, J

Prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Registrar, Special Court under the Land Grabbing (Prohibition)

Act, B.R.K.R. Buildings, Tank Bund, Hyderabad.

2**.** G. Ramavataram, S/o Late G. Banaiah, Secretary,

Hindustan Aeronautics Employees Co-Operative Housing Society

Limited (TBC No.269), a Society Registered under
A.P., Co-Operative Societies Act, 1964,

HAL Campus, Balanagar, Hyderabad-42.

3. CD copies